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No. 345

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, SUED IN THE NAME OF THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS, AND ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY RECEIVERS OF UNITED STATES STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FLEET CORPORATION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 345

UNITED STATES SHIPPING BOARD MERCHANT FLEET Corporation, sued in the name of United States Shipping Board Emergency Fleet Corporation, petitioner

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF Groton Iron Works, and Isaac Siegel and John M. P. Thatcher as Ancillary Receivers of United States Steamship Company

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FLEET CORPORATION

OPINIONS BELOW

The opinion of the District Court (R. 312–318), is reported in 26 F. (2d) 116. The opinion of the Circuit Court of Appeals (R. 338–343) is reported in 32 F. (2d) 680.

JURISDICTION

The decree of the Circuit Court of Appeals for the Second Circuit was entered May 13, 1929 (R. 344), and rehearing was denied May 28, 1929 (R. 346). Petition for certiorari was filed August 27, 1929, and granted October 21, 1929. The juris-

diction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A written agreement executed on March 26, 1920, between Groton Iron Works and the Fleet Corporation, "a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," adjusted all rights of the parties under several contracts previously entered into between June 15, 1917, and September 30, 1918, or provided a method for their adjustment. The earlier contracts provided for the construction of certain hulls and suspension of some of the construction. The contract of March 26, 1920, provided for the lifting of the receivership of Groton, for certain advances to Groton, and for certain cancellations, payments, and accountings. The action of the Fleet Corporation in executing all of the contracts was authorized or ratified by various Executive Orders of the President pursuant to the Emergency Shipping Fund provisions of the Act of June 15, 1917, and other war emergency Acts amendatory thereof.

The sole question is, whether on these facts and the other facts appearing upon bill, answer, and proof the Fleet Corporation is personally liable for an accounting under the contract of March 26, 1920,

in an equity suit in the District Court for the District of Connecticut.

STATUTES AND EXECUTIVE ORDERS INVOLVED

Shipping Act, 1916, c. 451, 39 Stat. 728. The pertinent portions are Sections 5, 7, 11, and 13.

Urgent Deficiency Act, approved June 15, 1917, c. 29, 40 Stat. 182. The pertinent sections are the Emergency Shipping Fund provisions, and Section 3 of the Act. The Executive Orders issued by the President on July 11, 1917, and December 3, 1918, are also pertinent.

Sundry Civil Act, approved July 19, 1919, c. 24, 41 Stat. 163. The pertinent provision will be found under the title "Emergency Shipping Funds" on page 181, and is set out in the President's Executive Order of August 11, 1919, delegating the authority to dispose of property acquired by the Fleet Corporation.

Merchant Marine Act, approved June 5, 1920, c. 250, 41 Stat. 988. The pertinent portions are Sections 2, 4 and 12.

General Appropriation Act, approved June 12, 1922, c. 218, 42 Stat. 635, 647. The pertinent provision is found under the title "Emergency Shipping Fund."

The portions of the Acts and Executive Orders above mentioned are set forth in the Appendix to this brief, pp. 41-56, *infra*.

STATEMENT

On June 15, 1917, the Fleet Corporation entered into a contract with Groton Iron Works, a Maine corporation, by which the latter agreed to construct twelve wooden hulls at Noank, Connecticut. (R. 36.) This contract was modified by a supplemental contract, dated September 30, 1918, which provided that only eight of said twelve wooden hulls should be constructed. (R. 44.) On August 11, 1917, the Fleet Corporation executed another contract with Groton for six steel ships (R. 48), and on April 20, 1918, another contract for six more steel ships. (R. 59.) The steel ships were to be constructed at Groton, Connecticut. (R. 49, 60.) These construction contracts, although made in the name of the Fleet Corporation, were entered upon by authority of the Emergency Shipping Fund provisions of the Urgent Deficiency Act of June 15, 1917 (40 Stat. 182; pp. 11-16, *infra*), which authorized the President to enter upon contracts for the construction of ships and which powers were duly delegated by appropriate Executive Orders to the Fleet Corporation (Brief in Opposition to Certiorari, p. 2; pp. 46-49, *infra*). After the Armistice, Groton was ordered to suspend the construction of three of the steel ships. (R. 21, 90.)

In March, 1919, Groton had become involved in financial difficulties and receivers were appointed by the State court, who continued to operate the two plants and to carry on construction work under

the contracts above mentioned. (R. 108.) While the receivers were in charge, those interested in Groton, including Charles W. Morse and his sons, endeavored to have the receivership lifted. Several conferences were held. (R. 108, 109.) From time to time the Fleet Corporation had previously loaned large sums of money to Groton, secured by mortgages on the shipbuilder's plants, which loans aggregated $1,800,000, plus interest, at the time Groton was so soliciting further advances. (R. 77.)

These negotiations culminated in the execution, on March 26, 1920, of a new contract which recited that it was between "Groton Iron Works, * * * party of the first part," and the Fleet Corporation, "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America (hereinafter referred to as the owner), party of the second part." (R. 75.) The contract set forth that Groton had already completed and delivered five wooden ships and six steel ships. (R. 75.) It provided that the contract as to the three steel ships previously suspended and the three wooden hulls then under construction was cancelled and Groton agreed to accept $500,000 and certain ships and materials in full settlement of all its claims for just compensation, for suspension and cancellation. (R. 77–79.) This left three steel ships, then under construction, for completion and delivery. The contract declared the title to these three hulls to be in the United States (R. 78), and provision was made for payment to

Groton of an increased price for all nine of the steel ships over the price agreed upon in the prior contracts. (R. 79.) In consideration of such increased price Groton agreed to waive all other claims which had then accrued arising out of construction of the steel ships. (R. 77.) The contract fixed the amount due from Groton for principal and interest up to March 1, 1920, of the loans secured by the mortgages, at $1,888,106.68, and provided that maturity of the mortgages should be extended to July 1, 1921. (R. 77.) Provision was also made for an immediate advance of $250,000 to Groton on the uncompleted contracts. (R. 78.) This sum was to be turned over to the receivers and disbursed by them as a twenty per cent dividend to Groton's creditors. (R. 78.) The remaining eighty per cent due the creditors was to be paid by a series of promissory notes to be issued by Groton. Thus, the receivership was to be lifted and the plants restored to Groton so that its modified contracts might be completed. Article XII of the contract (R. 83) released the United States, the Shipping Board and the "Emergency Fleet Corporation, both in its corporate capacity and as representing the United States of America" from all other claims not provided for in the contract, except that provision was made (R. 84) for continuation of a reconciliation of accounts then in progress to determine the amount due Groton for completed construction work on the wooden ships.

The $250,000 which was to be distributed by the Receivers to the creditors was advanced and the receivership was lifted. Groton then resumed control of its plants and attempted to carry on construction of the three unfinished steel vessels. (R. 110.) The Fleet Corporation was making weekly advances for pay-roll requirements (R. 264), but on April 17, 1920, notified Groton that further money for completion of the ships must be provided by the shipbuilder because there had been paid and debited to Groton a sum in excess of all credits due under the agreement of March 26, 1920 (R. 263).

Groton then admitted that it was unable to continue construction without further financial assistance from the Fleet Corporation (R. 264–265), although less than a month earlier, when execution of the agreement of March 26, 1920, was being considered, Morse and his attorney had assured the Shipping Board that arrangements had been made to provide the necessary funds to pay off Groton's creditors and complete the ships (R. 109).

In the emergency, to prevent tying up work on the ships (R. 267), the Fleet Corporation advanced $46,424.66 more for the April 24th payroll (R. 270). Renewal of the receivership was considered. (R. 267.) After further negotiations more money was advanced to Groton. The three steel vessels were completed and delivered by Groton. (R. 111.) On

December 1, 1921, Groton filed its petition in bankruptcy in the District Court of Connecticut. (R. 28.)

The present litigation was instituted against the Fleet Corporation by Groton in February, 1921 (before the petition in bankruptcy), as an action at law in the Superior Court of Connecticut (R. 1), to recover $13,000,000 damages (R. 11), because of the suspension of construction of some of the ships and because of alleged breaches of the three shipbuilding contracts. The case was removed to the United States District Court, where, upon stipulation, it was transferred to the equity side. (R. 14.) Respondent Harwood, as Trustee in Bankruptcy (R. 15), filed a new bill of complaint, verified July 11, 1923 (R. 15–36), setting forth practically the same claims as those contained in the original complaint at law, but praying for an accounting, for a decree setting aside the settlement contract of March 26, 1920, on the ground of duress and fraud, and for a money judgment (R. 35–36). Respondents Siegel and Thatcher, as ancillary Receivers of United States Steamship Company, a corporation which owned all the capital stock of Groton, intervened. (R. 100–101, 102.)

Petitioner's answer (R. 86) denied all the allegations of the bill of complaint as to breaches of the contracts, duress, and fraud, and alleged that Groton had been overpaid to the extent of at least $5,000,000 (R. 96). As a first separate defense, petitioner alleged that by virtue of the contract

of March 26, 1920, Groton had settled all matters in controversy which had arisen prior thereto. (R. 93.) As a fourth separate defense, petitioner alleged that with respect to each and all of the transactions set forth in the bill, petitioner was acting solely as an agency of the United States under the powers delegated to petitioner by the President, pursuant to the Act of June 15, 1917 (c. 29, 40 Stat. 182); that petitioner had not assumed and was under no personal liability to plaintiff because of such transactions; and that plaintiff's sole remedy, if any, was by suit against the United States in the manner provided by law, that is, in the Court of Claims. (R. 95.)

On motion, the court severed the special issues (R. 99), and referred petitioner's first and fourth separate defenses to a Special Master to take testimony and report thereon (R. 98), because a determination adverse to plaintiff on either issue might obviate taking any further testimony (R. 97).

The Special Master's report (R. 102) contained special findings of fact and conclusions of law. It sustained petitioner on every issue raised by the first defense and held that the rights of the parties were fixed by the contract of March 26, 1920. (R. 111, 112, 113.) As to the fourth defense, the Master concluded that the suit could be maintained against the Fleet Corporation, as the transactions were between Groton and the Fleet Corporation and not with the United States. (R. 113, 117–120.) This

conclusion was in large part dependent upon the Master's interpretation of the *Sloan* and *Astoria cases,* 258 U. S. 549, although the applicable facts in this case differ from the applicable facts in those cases.

After hearing on exceptions of both parties to this report, the District Court rendered an opinion (R. 312), which sustained the Master's report as to the first defense (R. 313), and sustained petitioner's exceptions to the Master's report as to the fourth defense (R. 313) on the ground that the evidence had established that (R. 318)—

> the Fleet Corporation was acting as agent of the United States in behalf of the United States, under the statutory powers granted to the President and by him delegated to the Fleet Corporation, to procure the construction of ships for the United States. The Fleet Corporation is, therefore, not liable.

Accordingly, a decree was entered dismissing the bill (R. 318).

On appeal, the Circuit Court of Appeals sustained the first defense (R. 342), but it reversed the District Court as to the fourth defense, and held that petitioner was personally bound by the contract of March 26, 1920, and that the District Court erred in sustaining this defense (R. 338–342). This conclusion was based largely upon the authority of the *Sloan-Astoria cases.*

Petition for rehearing was denied. (R. 346.) The case is now here on certiorari.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

I. In reversing the decree of the District Court as to the fourth defense.

II. In holding that the Fleet Corporation was personally bound by the contract of March 26, 1920, and subject to an accounting under that contract.

SUMMARY OF ARGUMENT

I. In executing the contract of March 26, 1920, the Fleet Corporation was acting as the agent of a disclosed sovereign principal. Besides disclosing in the description of the parties that it was acting solely in a representative capacity and solely on behalf of its principal, much of the subject matter of the contract relates to matters, such as the cancellation of contracts and the payment of just compensation therefor, with which the Fleet Corporation, under its corporate charter powers, had no concern. Moreover, the authority under which this public agent was acting existed by reason of Acts of Congress and Executive Orders, of which everyone was chargeable with notice.

When a public officer or agent acts in the line of his duty and by legal authority, his contracts, made on account of the Government, are public and not personal. They inure to the benefit of and bind the Government, not the agent. It can not matter that the public agent is a corporation rather than an individual.

In authorizing the President to delegate to such agency or agencies as he might determine the power and authority conferred on him for the production of ships for the use of the Nation in the war emergency, Congress did not intend that the public agents so selected should enter into contracts for the benefit of the United States upon the agents' own personal credit, nor that the enormous sums of public money appropriated were to be expended for the personal account of the agents; nor did Congress intend that such agents should be held personally liable for their lawful acts and engagements while so employed.

The decision of this Court in the *Sloan-Astoria cases* is not authority for holding the Fleet Corporation personally liable in this case, because the only question determined in those cases was the jurisdiction of the District Courts to entertain suits against the Fleet Corporation. The contract in this case differs in many particulars from the contract considered in the *Sloan-Astoria cases*.

II. The corporate liability of the Fleet Corporation to account to respondents in this suit, if any exists, must be predicated upon the contract of March 26, 1920, which the court below found was an accord and satisfaction of all prior demands. Since respondents have not asked for a review of that finding of the Circuit Court of Appeals, they may not question it before this Court. If the court below was right in holding that the Fleet Corporation had made itself personally liable on

the earlier contracts with Groton because of the frame of the earlier instruments, the contract of March 26, 1920, constituted a novation by the United States of any liability which previously may have been incurred by the Fleet Corporation, and Groton accepted the novation in full accord and satisfaction of all its rights arising from the earlier contracts.

III. If the form of the contracts involved in this case, in the light of the applicable statutory provisions, was not sufficient to exclude liability on the part of the Fleet Corporation, this liability was assumed and taken over by Congress on behalf of the United States, and the remedy provided by statute for the enforcement of this liability is exclusive.

The decree of the Circuit Court of Appeals should be reversed and the suit dismissed.

ARGUMENT

I

IN EXECUTING EACH OF THE CONTRACTS, THE FLEET CORPORATION WAS ACTING AS THE AGENT OF A DISCLOSED SOVEREIGN PRINCIPAL

The contracts here involved, providing for the construction of vessels, were entered upon by authority of the Urgent Deficiency Act of June 15, 1917 (40 Stat. 182; pp. 11–16, *infra*), which empowered the President to place orders for the construction of vessels, through the Fleet Corporation. Among the powers so conferred upon the President was the power to construct vessels, modify, suspend

and cancel contracts for the construction of vessels, and determine just compensation for such modification, suspension or cancellation. *Skinner & Eddy Corporation* v. *McCarl,* 275 U. S. 1, 9, 10. The contract of March 26, 1920, was negotiated by the Fleet Corporation under such authority and not by virtue of powers conferred by its charter for private corporate purposes. That it was the contract of the United States is shown by the following introductory language of the contract itself (R. 75)—

> United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America (hereinafter referred to as the owner), party of the second part, * * *.

So Groton knew it was dealing with a public agent acting for a sovereign principal. The presumption that the agent of a known principal intends to bind the latter rather than himself applies with peculiar force to a public agent, so that it is incumbent upon him who seeks to hold a known public agent personally responsible to adduce clear proof of an intention so to be bound. (Mechem, Agency (2d ed.), Sec. 1428, and cases cited.) Groton was bound to know it was contracting with a public agent. The related Acts of Congress and Executive Orders alone were notice of this fact. *Russell Motor Car Co.* v. *United States,* 261 U. S.

514, 523; *Buffalo Union Furnace Co.* v. *Fleet Corporation*, 291 Fed. 23 (C. C. A. 2d). In the latter opinion it is clearly indicated that each contract of the kind here concerned was made with the knowledge imputed by law that the Fleet Corporation was empowered to act as the President's agent; the court concluded that (p. 27):

> If there be any assumption or presumption, it must be that defendant acted under its lawful powers as agent.

Although it adopted the accepted rule in that case, the same court in the present case said (R. 339):

> It had [has?] been now authoritatively settled that, although in making such contracts [referring to those made in 1917–1918] the Fleet Corporation was exercising powers derived from the Executive Orders issued pursuant to the urgent deficiency act for the purpose of carrying out its provisions, it is a principal and responsible as such.

If the President had executed such contracts, would he be held to be a principal and responsible as such? Or was the court below persuaded that because the public agent is a corporation some different rule of general law applied than that applicable when the agent is an individual person? The provisions of the contract of March 26, 1920, show that the Fleet Corporation acted only as an agent. This is shown by Article XV of the Contract (R. 85), which provides that "No Member of, or Dele-

gate to Congress * * * shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom." This article must have been included because of the provisions of Section 114 of the Criminal Code which make it an offense for such an officer to benefit by any contract only when the contract is "made or entered into *in behalf of the United States* by any officer or person authorized to make contracts on its behalf" (italics ours), and make void all contracts made in violation of the section.

Paragraph (e) of Article II (R. 77) allows the contractor $500,000 in settlement and adjustment of "all obligations of the owner to the contractor or to the receivers, arising out of the suspension and cancellation of the three hulls, 10 to 12 inclusive, under contract 225 S. C." The word "owner" as here employed seems to mean the United States because under the Act of June 15, 1917 (pp. 45–46, *infra*), the obligation to make "just compensation," upon suspension or cancellation of a contract pursuant to that Act, is an obligation imposed on the United States. If the Fleet Corporation was not acting as a duly authorized public agent in executing the contract of March 26, 1920, it could not bind the United States to pay "just compensation" and it would have no occasion to attempt to bind itself to make such payment. Article III (R. 78) likewise provides for cancellation of the contract for three steel vessels and three wooden hulls, and *awards* "just compensation" (R. 79) to Groton on account of the cancella-

tions. It is true, as was pointed out by the respondents in their brief in opposition to the petition for certiorari (pp. 18–19), that one of the earlier contracts in this case provided that the contractor should "be reimbursed for losses sustained" by certain cancellations. (Paragraph XVIII of Contract 225 S. C.; R. 71.) But the cancellation contemplated by this provision was to be made only if "the progress of the work [should] not be satisfactory to the owner." (R. 71.) This clause made no provision for compensation for a cancellation by the United States acting in the public interest, and it was such a cancellation which actually occurred. The "just compensation" provided for by the statute (Act of June 15, 1917) was an obligation of the United States, and it is this obligation which was settled by the contract of March 26, 1920.

The contract provided that a part of this "just compensation" was to be paid in kind—that is, by turning over to the contractor a completed wooden ship, a wooden hull, and also certain materials "delivered by the owner." (R. 79.) The owner of the completed ship was the United States. See the Executive Orders of July 11, 1917, and December 3, 1918, pp. 46–49, *infra*. It was the Shipping Board, and not the Fleet Corporation, that was there directed to take title to, and operate, manage and dispose of all constructed ships acquired under authority of the Act of June 15, 1917. That Congress contemplated that the "owner" of the materials was the United States appears from the

following language in the Sundry Civil Act, approved July 19, 1919 (c. 24, 41 Stat. 163, 181):

> Any material or plant, as defined under the emergency shipping fund provision of the Deficiency Appropriation Act approved June 15, 1917, acquired by the United States Shipping Board Emergency Fleet Corporation, may be disposed of as the President may direct.

Congress would not have undertaken so to dispose of the "material or plant" had it not understood that it was dealing with the property of the United States. By Executive Order dated August 11, 1919 (see pp. 49-51, *infra*), the President delegated his power to dispose of these surplus materials to the United States Shipping Board and authorized that Board to sell or dispose of such materials through the agency of the Fleet Corporation.

The Fleet Corporation had complete and full authority as agent to execute this contract and to make the promises therein on behalf of the United States. In its private corporate capacity it did not have like power to award "just compensation" for the cancellation of contracts and did not have like power to dispose of ships and materials acquired by it as the agent of the President.

There are in the contract several references to "the owner" so phrased as to imply that the Fleet Corporation regarded and referred to itself as "the owner." This confusion of identity and ownership can only be explained when it is remembered that up to the decision of this Court

in the *Sloan-Astoria-Eastern Shore cases*, 258 U. S. 549, the officials and attorneys of the Fleet Corporation asserted and consistently maintained that the Fleet Corporation was an integral arm and branch of the Government, similar to the Navy Department or any other executive department or bureau. This very confusion shows that in making the contract Groton could not have been relying on the separate corporate liability of the Fleet Corporation, but rather regarded the Corporation as indistinguishable from the Government, as nothing more than an agent acting on behalf of the United States.

Where a public officer or agent acts in the line of his duty and by legal authority, his contracts made on behalf of the Government are public and not personal. They inure to the benefit of and bind the Government, and not the officer. In *Parks* v. *Ross*, 11 How. 361, this Court said (p. 374):

> Now, it is an established rule of law, that an agent who contracts in the name of his principal is not liable to a suit on such contract; much less a public officer, acting for his government. As regards him the rule is, that he is not responsible on any contract he may make in that capacity; and wherever his contract or engagement is connected with a subject fairly within the scope of his authority, it shall be intended to have been made officially, and in his public character, unless the contrary appears by satisfactory evidence of an absolute and unqualified engagement to be personally liable.

See also *Hodgson* v. *Dexter*, 1 Cranch 345; *Sheets* v. *Selden's Lessee*, 2 Wall. 177; *District of Columbia* v. *Camden Iron Works*, 181 U. S. 453.

The opinion of the court below states (R. 341) that the decisions above cited "do not establish that a public agent may not be personally liable for a contract made by him on account of the Government, but only that a presumption arises that a public official contracting in behalf of the Government does not intend to bind himself personally." The court below then held that this presumption "was overcome by the contracts entered into, similar in terms and containing the same characteristics, which were considered in the *Sloan case.*"

This conclusion was reached even as to the settlement contract of March 26, 1920, because "the obligations of the owner released by this settlement contract were the obligations of the Fleet Corporation arising under the [prior] contracts * * *." (R. 340.) In reaching this conclusion the Circuit Court of Appeals overlooked a point of distinction between the contracts, to which we have already referred. The contracts involved in the *Sloan cases* were contracts which the Fleet Corporation could have made on its own behalf. But the contract of March 26, 1920, involved in this case contained as its principal feature a settlement of liability on account of suspension and cancellation of other contracts for the construction of ships. This liability for cancellation was one imposed upon the *United States* by the Act of June

15, 1917. That the respondents could have prosecuted their claims against the United States for their loss on account of the cancellation of the construction contracts is established by *Freygang* v. *United States*, reported under the title of *Russell Motor Car Co.* v. *United States*, 261 U. S. 514. This was not a liability owed by the Fleet Corporation to Groton. In contracting on this subject the Fleet Corporation could have been acting only as agent.

We can not concede that the *Sloan-Astoria* decision should be construed as holding that the Fleet Corporation was not only *suable* but was also *liable* as principal even on contracts executed by it in behalf of the Government under the authority delegated to it. It appears that the only issue raised by the record in those two cases was whether the respective District Courts did or did not have jurisdiction, because of the immunity from suit claimed by the Fleet Corporation. In discussing the *Sloan case*, which was an action sounding in tort, the majority opinion points out that the Fleet Corporation, by reason of its incorporation, possessed an identity apart from that of the United States; that any person within the jurisdiction is amenable to the law; and even though such person, either natural or artificial, is an instrumentality or agent of the Government for the highest ends, he does not cease to be answerable for his acts, merely because he is such agent. Hence the District Court had *jurisdiction* of the *Sloan* suit.

The same reasoning was applied to the *Astoria* suit, which was an action *ex contractu*. In discussing the provisions of the *Astoria* contract, this Court said (p. 569): "The whole frame of the instrument seems to us plainly to recognize the Corporation as the immediate party to the contract." In employing this language we understand that the Court intended to make clear the difference in identity between the agent that actually executed the contract and the United States, for the Fleet Corporation was then contending in effect that its identity had been merged in that of the Government of the United States and that it possessed the sovereign's immunity from suit. We do not understand this reference to the Fleet Corporation as "the immediate party to the contract" as a holding that the Fleet Corporation was therefore *liable* as a principal, regardless of what the proof might show.

Our interpretation seems to be borne out by the next two sentences:

> The distinction between it and the United States is marked in the phrase last quoted. If we are right in this, further reasoning seems to us unnecessary to show that *there was jurisdiction of the suit*. (Italics ours.)

From the dissenting opinion it appears that the minority of the Court placed the same interpretation on the decision as the one we are now suggesting. The dissenting opinion said (p. 572):

The opinion of the court is carefully drawn and if its conclusion is to rest merely on the nice distinction that it does not clearly appear from a proper construction of the pleadings that the acts here complained of were acts done under authority delegated by the President to the Fleet Corporation, as his agent, then the question I have been discussing and which seems to me to be in these cases is not here decided, and will only arise on answer and evidence.

Since the *Sloan* and *Astoria cases* were decided eight years ago, the exact question raised by the record here has not been presented to this Court "on answer and evidence." But there have been cases in which the status of the Fleet Corporation has been considered. See *Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, and *Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, 422. In the latter this Court said that the Fleet Corporation "has never done any business, or conducted any operation, except on behalf of the United States."

Our understanding of the effect of the decision in the *Sloan-Astoria cases* is shared not only by the District Judge in the court below in the instant case (R. 316) but also by two other Federal courts in recent opinions.

In *Astoria Marine Iron Works* v. *Fleet Corporation*, 295 Fed. 415, where the same plaintiff was suing on a Fleet Corporation contract similar to the one that was before this Court, the Fleet Corpora-

tion filed an answer denying liability to plaintiff on the same grounds that are being asserted in this case in the Fourth Separate Defense. (R. 95.) Plaintiff demurred and moved to strike the answer. In overruling the demurrer and motion, District Judge Bean said (p. 418):

> Great reliance is placed by plaintiff on the decisions in the *Sloan Shipyards, supra,* and kindred cases; but as I read the opinions in these cases the question here presented, although urged upon the attention of the court, was deemed not to be within the record, and is not decided. Two of the cases were appeals from judgments sustaining demurrers to the complaints and dismissing the actions, on the ground that the Fleet Corporation was a mere bureau or arm of the Government and entitled to the immunity of the sovereign. The court ruled that it was a public business corporation, and liable to be sued for its torts or on its contracts the same as any other corporation, and therefore the complaints stated a cause of action; but the question of whether it is personally liable on contracts made by it as agent or representative of the President under the war powers conferred upon him was not decided.

In *Fleet Corporation* v. *Galveston Drydock & Const. Co.,* 13 F. (2d) 607 (certiorari denied, 273 U. S. 725), a judgment had been entered against the Fleet Corporation for certain repair work on a Shipping Board vessel on written orders given by the Fleet Corporation. On writ of error the Cir-

cuit Court of Appeals for the Fifth Circuit reversed and remanded. The court said (pp. 611–612):

> We are of opinion that the language of the written instruments evidencing the contracts sued on, when that language is considered in the light of statutory provisions determining by whom the work and labor called for by those contracts may be authorized to be done, and in the light of the facts that the Fleet Corporation, acting in its own behalf as principal, was without authority to have that work done, but could legally act for the Shipping Board in having it done, requires the conclusion that the Fleet Corporation in making those contracts acted as the agent of the Shipping Board, and did not thereby obligate itself to pay for the material and labor called for by those contracts. Under the laws which were in force when those contracts were made, the Fleet Corporation could act in two entirely different capacities, as a private corporation carrying on business in its own name as a principal, and as the agent of the Shipping Board, an administrative branch of the Government. It has been settled that the Fleet Corporation is subject to suit and judgment against it on a contract made in its own name as principal in the conduct of a business in which it is authorized to engage. *Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762.
>
> It is equally well settled that an agent of the Government or of a branch thereof is not

> personally liable on a contract made on behalf of his principal while acting within the scope of his authority. * * *

While the contracts considered in the *Galveston Drydock case* were made by the Fleet Corporation pursuant to authority delegated to it under Section 35 of the Merchant Marine Act of 1920, the principle applied is the same as that recognized by Judge Bean in the *Astoria case.*

The respondents place reliance upon the case of *United States* v. *Wood,* 290 Fed. 109 (C. C. A. 2d), affirmed by this Court, *per curiam,* 263 U. S. 680. That case arose on an attempt by the United States to obtain priority by suing in its own name upon the same claim on which the Fleet Corporation was denied priority in *Fleet Corp.* v. *Wood,* one of the cases of the *Sloan-Astoria* group, decided in 258 U. S. 549. The Circuit Court of Appeals which decided this second *Wood case* has shown that it was decided upon a basis which has no application to the present case. In *Whan* v. *Green Star S. S. Corp.,* 22 F. (2d) 483 (C. C. A. 2d), it said (p. 488):

> It is apparent that, although in the first Woods case appeal priority was denied, the claim which had been presented in the name of the Fleet Corporation was allowed to stand, for the order was affirmed. Therefore there was a general claim filed in bankruptcy, when the United States filed its bill seeking priority or to impress a trust for the same claim in the hands of the trustee.

> The United States did not deny the agency of the Fleet Corporation in the second suit, but claimed that it was acting for it, and not in an individual capacity. A judgment against the Fleet Corporation was likewise binding against the United States, and therefore the question was settled. The claim arose by the indebtedness of the Eastern Shores Shipbuilding Corporation. It was but one debt, and it was impossible to say that it was owed by [to?] the Fleet Corporation for the full amount as allowed as a general claim, and that it was also liable as a preferred claim against [to?] the United States.

The respondents also relied in their brief in opposition to the petition for certiorari on several cases in the several Circuit Courts of Appeals. These are *Fleet Corporation* v. *South Atlantic Drydock*, 300 Fed. 56 (C. C. A. 5th); *United States* v. *Matthews*, 282 Fed. 266 (C. C. A. 9th); *Fleet Corporation* v. *Banque Russo-Asiatique, London*, 286 Fed. 918 (C. C. A. 3rd); *Shooters Island Shipyard Co.* v. *Standard Shipbuilding Corporation*, 293 Fed. 706, 3 F. (2d) 1022 (C. C. A. 3rd); *Fleet Corporation* v. *Rosenberg Bros. & Company*, 12 F. (2d) 721 (C. C. A. 9th), reversed on other grounds, 276 U. S. 202; *Cohn* v. *Fleet Corporation*, 20 F. (2d) 56 (C. C. A. 6th); *Fleet Corporation* v. *Tabas*, 22 F. (2d) 398 (C. C. A. 3d); *Dietrich* v. *Fleet Corporation*, 9 F. (2d) 733 (C. C. A. 2d); *Eichberg* v. *Fleet Corporation*, 273 Fed. 886, 14 F. (2d) 248 (Ct. of App. D. C.).

Of these the *Matthews case* is clearly inconsistent with the later decision in the same circuit in *United States* v. *Skinner & Eddy Corporation,* 35 F. (2d) 889, 892. *Fleet Corporation* v. *Banque Russo-Asiatique, London, Fleet Corporation* v. *Rosenberg Bros. & Co.* and *Cohn* v. *Fleet Corporation* arose as a result of the activities of the Fleet Corporation in operating ships and have no bearing on the effect of contracts for the construction of ships. In *Fleet Corporation* v. *South Atlantic Drydock,* and *Shooters Island Shipyard Co.* v. *Standard Shipbuilding Corporation,* the form of the contract in question does not appear in the opinion and it consequently can not be determined how clearly the Fleet Corporation indicated that in contracting it was contracting only as agent. These contracts did not involve settlement of just compensation for cancellation of contracts. In *Eichberg* v. *Fleet Corporation,* the contract did not indicate that the Fleet Corporation was acting as agent. *Fleet Corporation* v. *Tabas* seems to lend some support to respondents' contention, but the opinion shows that the court failed to observe the important distinction between the Shipping Board and the Fleet Corporation. *Dietrich* v. *Fleet Corporation,* which tends to support respondents' contention, arose out of the operation rather than the construction of ships, and was decided by the same court that decided the case which is here being reviewed, as were *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation,* 294 Fed. 641,

(certiorari denied, 264 U. S. 586), and *Smith* v. *Fleet Corporation*, 26 F. (2d) 337 (certiorari denied, 278 U. S. 628). Most, if not all, of these decisions are based upon what we regard as an erroneous interpretation of the *Sloan-Astoria* decision.

This discussion shows, it is submitted, that in entering into the contracts involved in this case the Fleet Corporation was acting only as agent for a sovereign principal, and that in so doing it incurred no liability in its individual corporate capacity.

II

THE CORPORATE LIABILITY OF THE FLEET CORPORATION, IF ANY EXISTS, MUST BE PREDICATED UPON THE CONTRACT OF MARCH 26, 1920

The respondents' bill of complaint (R. 15) sets forth several contracts executed by the Fleet Corporation in the years 1917–1918 and seeks an accounting for various alleged breaches thereof. But the Fleet Corporation's answer pleaded as a first separate defense (R. 93) that by virtue of the provisions of the contract of March 26, 1920 (R. 75), Groton, for a valuable consideration, had released the United States and the Fleet Corporation from all claims and causes of action accruing prior to that date.

This defense was based upon Paragraph 1 of Article XII of the contract of March 26, 1920 (R. 83) which contained a release from Groton to the United States and the Fleet Corporation "from any and all claims, demands, causes of action, suits, expenses, and all other charges of whatsoever kind or

nature which it or anyone whomsoever had, has, or may have against the United States of America, and the Emergency Fleet Corporation, or either of them, by reason of contracts No. 15 W. H., 57 S. C., and 225 S. C., or the supplements thereto up to the date hereof." Paragraph 2 of this Article of the contract operated to limit to some extent the broad terms of this general release. This limiting paragraph read as follows (R. 84):

> 2. The reconciliation of the accounts of the contractor in respect of the construction of wood vessels at the Noank plant with those of the owner, which has been in progress between the receivers and the New York district office of the owner during the past four months shall be continued with respect to items upon which a reconciliation or agreement has not been reached, and any amount found due to the contractor in respect of any of the hulls, (the uncompleted hulls to be paid for on the basis of the degree of completion of each) shall be paid to the contractor, anything contained in this agreement to the contrary notwithstanding, in addition to the wood hulls, wood ship and bill of material No. 500 awarded to the contractor as just compensation for cancellation as provided in Article III, paragraph 2, hereof. If any money should be found due the owner by reason of said reconciliation, the amount thereof shall be paid by the contractor to the owner, or deducted by the owner from any moneys or credit due the contractor.

The only limitation in this paragraph on the generality of the preceding release is that if a balance is found due to Groton as a result of the reconciliation relating to the one contract involving wooden vessels, it "shall be paid to the contractor." Since the Fleet Corporation in negotiating the contract of which this clause is a part was "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America" (R. 75), it seems to follow that any payment which it should be determined was due under this clause would be made by the United States.

Except for Paragraph 2 of Article XII just referred to, the contract of March 26, 1920, wholly superseded all the earlier contracts so far as any liability to Groton was concerned. It is true that Article XVII of the contract provided as follows (R. 85):

> This agreement is supplemental to contracts 15 W. H., 57 S. C., and 225 S. C. and the supplements thereto, and where inconsistent therewith shall be held to govern. Except as herein otherwise provided, the provisions of the said contracts and supplements thereto shall remain in full force and effect.

This Article, of course, is by its own terms of little importance in view of the fact that the release in Article XII above referred to was complete and general as to all liability theretofore incurred with the exception which has been discussed.

The Special Master, to whom the question raised by this first separate defense was referred, reported (R. 111) that by the contract of March 26, 1920—

> the parties intended to and did adjust all differences then existing between them to that date. And Groton, in Article XII, section I * * * released the Fleet Corporation from all claims, demands, causes of action, etc., which it had against said Fleet Corporation to that date, except the matter specifically excluded.

The "matter specifically excluded" was that covered by this section 2 of Article XII under discussion. Although it was excluded from the operation of the release, the effect of the contract was to make the United States the party liable, if any liability to Groton should be shown at the conclusion of the accounting contemplated by the section.

The Special Master also found (R. 112) that no fraud, deceit, duress or misrepresentation was resorted to by the Fleet Corporation, that Groton accepted and retained the benefits contained in the contract (R. 113), and that the contract should not be set aside in whole or in part. (See Reasons for Master's conclusions, R. 114.) The respondents' exceptions to these findings (R. 291) were overruled by the District Court (R. 313), and the respondents' contentions as to this ruling (R. 321) were also overruled by the Circuit Court of Appeals. That court said (R. 342):

> The supplemental contract of March 26, 1920, released the parties from the obligations and claims prior thereto. The master was sustained by the court below in holding there was an accord and satisfaction, and in his conclusion that the settlement was held free from fraud and misrepresentation. This finding, based upon contradictory evidence, depending upon the credibility of witnesses, is sufficiently supported by credible testimony, and as such we accept it.

The respondents are not now in a position to ask this Court to review this ruling of the court below. *Charles Warner Co.* v. *Independent Pier Co.*, 278 U. S. 85, 91; *Federal Trade Commission* v. *Pacific States Trade Assn.*, 273 U. S. 52, 66.

If the Fleet Corporation was liable under the earlier contracts with Groton, the contract of March 26, 1920, constituted a novation by which the United States undertook all the obligations due to Groton and which Groton accepted in full accord and satisfaction of all preexisting rights it may have had against the Fleet Corporation. The requisites of a novation are (1) a valid prior obligation to be displaced; (2) the consent of all the parties to the substitution; (3) a sufficient consideration; (4) the extinguishing of the old obligation; (5) the creation of a valid new one. *In re Ransford*, 194 Fed. 658, 662 (C. C. A. 6th). Even if it be assumed that in the earlier contracts with Groton, the Fleet Corporation had made itself personally liable to Groton because of

the phraseology of the contracts, we contend that by the contract of March 26, 1920, in which the Fleet Corporation made no promises except as "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," the United States was substituted as the obligor to Groton, so that the only liability which thereafter remained was that of the United States, and not that of the Fleet Corporation.

III

WHOEVER MAY HAVE BEEN BOUND BY THE CONTRACTS HERE IN QUESTION, THE LIABILITY HAS BEEN UNDERTAKEN BY THE UNITED STATES, AND CONGRESS HAS PROVIDED AN EXCLUSIVE REMEDY FOR ITS ENFORCEMENT

If the form of the contracts involved in this case, in the light of the applicable statutory provisions, was not sufficient to exclude liability on the part of the Fleet Corporation, this liability was, by Act of Congress, assumed by the United States, and an exclusive remedy for the enforcement of this liability was provided by statute.

In the Merchant Marine Act, approved June 5, 1920, 41 Stat. 988 (pp. 47-57, *infra*), Congress made elaborate provisions for the carrying out of the ship construction program initiated and theretofore carried out through the agency of the Fleet Corporation, for the disposition of the property so acquired, and for the settlement of the claims arising out of such contracts. Section 2(a) of the Act revoked the President's authority, and necessarily

that of his agent, the Fleet Corporation, to exercise further the powers authorized and to spend the money appropriated by the emergency legislation. (Act of June 15, 1917, as amended.) Section 2(b) (1) directed that "all contracts or agreements" previously made under the emergency legislation should "be assumed and carried out by the United States Shipping Board, hereinafter called 'the board.'" Provisions for the enforcement of the liability so undertaken was made in Section 2(b) (2) and Section 2(c) of the Act.

Section 2 (b) (2) provided:

> All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject *to the provisions of subdivision (c) of this section*, as if this Act had not been passed. (Italics ours.)

Section 2, subdivision (c), provided:

> As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*,

> That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

By the first of these provisions Congress provided that all rights and remedies accruing on these contracts would be unaffected by the Act, "subject to the provisions of subdivision (c) of this section." By subdivision (c), the liability was to be adjusted and settled by "the board," which was to act, of course, on behalf of the United States. And it was further provided that any one dissatisfied with the decision of the board should "have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed." The right to sue the United States, which had been given by the Acts repealed and which was referred to in this clause, was a right to sue in the Court of Claims, or if the amount involved were less than $10,000, in the District Courts. Act of June 15, 1917, c. 29, 40 Stat. 182, 183; pp. ~~44, 45–46~~ 72-73-74, *infra*.

Congress at the same time took away from the Fleet Corporation all authority over the contracts, and stripped the Fleet Corporation of all assets acquired under the contracts. Merchant Marine Act, 1920, Section 4; pp. ~~53–54~~ 51-52, *infra*. It does not seem possible that Congress intended by Sections 2(b)(2) and 2(c) to preserve a naked right to obtain a judgment against an agent who possessed no means for

satisfying such a judgment. Having provided a remedy against the United States, Congress also made provision for satisfying the claimants. The General Appropriation Act of June 12, 1922, c. 218, 42 Stat. 635, 647 (p. [illegible], *infra*), under the title "Shipping Board," provided:

> For the payment of claims, damage charges and miscellaneous adjustments, authorized under the provisions of the Merchant Marine Act, 1920, $50,000,000, of which $30,000,000 shall be immediately available: *Provided,* That no claim shall be paid out of the amount appropriated herein unless the Shipping Board shall find that such claim grew out of an agreement, expressed or implied, entered into with the United States Shipping Board or the Emergency Fleet Corporation or their legal representatives.

Whatever liability the Fleet Corporation may have incurred while acting as agent, we submit that Congress intended to have the Government assume this liability and to provide an exclusive remedy for its enforcement against the United States. See *United States* v. *Pfitsch,* 256 U. S. 547; *Nassau Smelting & Refining Co.* v. *United States,* 266 U. S. 101. The intention of Congress to make this remedy exclusive is further indicated by its action in passing the Suits in Admiralty Act, approved March 9, 1920, c. 95, 41 Stat. 988. This Act and the Merchant Marine Act were both considered by the same committees and were adopted at the same session of Congress. They were both intended to pro-

vide an orderly system for carrying out the responsibilities incurred by the Government through its merchant marine program. The Suits in Admiralty Act provided an exclusive remedy against the United States for claims arising out of the operation of Government-owned ships, whether such operation was carried on by the Shipping Board, by the Fleet Corporation, or by such operating companies as they might employ. *Johnson* v. *Fleet Corporation*, and related cases, Nos. 5, 32, 56, 123, October Term, 1929, decided January 6, 1930. See also *Fleet Corporation* v. *Rosenberg Bros.*, 276 U. S. 202. The remedy against the United States provided by the Merchant Marine Act should similarly be held exclusive.

CONCLUSION

It follows that the rulings of the lower court and the judgment or decree entered thereon are erroneous and should be reversed and the judgment of the District Court affirmed.

Respectfully submitted.

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FEBRUARY, 1930.

APPENDIX

Shipping Act of 1916, c. 451, 39 Stat. 728, 730–732

SEC. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: * * *

* * * * *

SEC. 7. That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred.

* * * * *

SEC. 11. That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed $50,000,000. The

board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided,* That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

* * * * *

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corpora-

tions owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

* * * * *

SEC. 13. That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000, and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $50,000,000: *Provided,* That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

Urgent Deficiency Act of June 15, 1917, c. 29, 40 Stat. 182–183, 217

Emergency Shipping Fund

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quality usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for

by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided,* That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

* * * * *

SEC. 3. That the appropriations contained herein shall be available for the payment of obligations on account of the existing emergency incurred prior to the passage of this Act and which are properly chargeable to such appropriations.

Executive Order, July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an Act of Congress entitled "An Act Making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby

direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said Board, be exercised directly by the said Board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE, *July 11, 1917.*

Executive Order, December 3, 1918

Delegating to the United States Shipping Board and to the United States Shipping Board Emer-

gency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas, by Executive Order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas, since the issuance of said Executive Order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, 65th Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively:

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may

be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to constructed vessels or parts thereof or charters therein; to the operation, management and disposition of such dry docks, marine railways, piers and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said Corporation or by said Board, with reference respectively to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *December 3, 1918.*

Executive Order, August 11, 1919

Directing the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation to dispose of material or plants in their discretion.

Whereas, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1920, and for other purposes," approved July 19, 1919, provides:

> Any material or plant, as defined under the emergency shipping fund provision of the Deficiency Appropriation Act approved

> June 15, 1917, acquired by the United States Shipping Board Emergency Fleet Corporation, may be disposed of as the President may direct.

And whereas, said Deficiency Appropriation Act, approved June 15, 1917, as amended by "An Act Making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918, defines the words "material" and "plant" as follows:

> The word "material" shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof.
>
> The word "plant" shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard, drydock, marine railway, pier, or dockyard and discharging terminal and any facilities or improvements connected with any of the foregoing descriptions or property.

Now, therefore, by virtue of the authority vested in me by said laws, but in no way limiting or restricting the effect of previous Executive Orders and Proclamations delegating powers and authority to the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation.

1. I hereby direct the United States Shipping Board to exercise all powers and authority now vested in me in reference to the disposition of materials or plants as above defined. I hereby direct said Board, in its discretion, to sell, lease or other-

wise dispose of such materials and plants or any portions or parts thereof, by public or private sale or contract, with or without notice, in such lots, at such times and places, upon such credit, security and other terms or conditions, and in such manner generally as said Board, from time to time, shall deem to the best advantage of the United States.

2. I hereby direct that such sales, leases or other disposition shall be made directly by the said Board or by it, in its discretion, through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

3. I hereby direct that all acts heretofore done by said Corporation or by said Board, with reference to such sales, leases or other disposition and which could have been properly done by me under any statutes heretofore enacted covering this subject matter, be, and they hereby are ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *August 11, 1919.*

Merchant Marine Act of 1920, c. 250, 41 Stat. 988, 990, 993

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of

the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such Act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other puposes," appoved July 18, 1918.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

(c) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided,* That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

* * * * *

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint reso-

lution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917, with the exception of vessels and property the use of which is in the opinion of the President required by any other branch of the Government service of the United States, are hereby transferred to the board: *Provided,* That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

* * * * *

SEC. 12. That all vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

General Appropriation Act of June 12, 1922, c. 218, 42 Stat. 635, 647

SHIPPING BOARD

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EMERGENCY SHIPPING FUND

For expenses of the United States Shipping Board Emergency Fleet Corporation during the fiscal year ending June 30, 1923, for administrative purposes, miscellaneous adjustments, losses due to the maintenance and operation of ships, for the tie-up, reconditioning and repair of ships, and for carrying out the provisions of the Merchant Marine Act, 1920, (a) the amount on hand July 1, 1922; (b) $50,000,000: *Provided,* That no part of this sum shall be used for the payment of claims other than those resulting from the current maintenance and operation of vessels; (c) the amount received during the fiscal year 1923 from the operation of ships.

For the payment of claims, damage charges and miscellaneous adjustments, authorized under the provisions of the Merchant Marine Act, 1920, $50,000,000, of which $30,000,000 shall be immediately available: *Provided,* That no claim shall be paid out of the amount appropriated herein unless the Shipping Board shall find that such claim grew out of an agreement, expressed or implied, entered into with United States Shipping Board or the Emergency Fleet Corporation or their legal representatives.

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U. S. GOVERNMENT PRINTING OFFICE: 1936